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BOOK REVIEWS

THE GROWTH OF AMERICAN LAW, *The Law Makers*. By James Willard Hurst. Boston: Little, Brown and Company, 1950. Pages xiii, 502. \$5.50.

It is impossible for me to give an intelligible short account of Professor Hurst's book because it does not fit into any of the familiar categories of books about the law. It is easy to express a high opinion of the author's scholarship, originality, industry and easy style of writing. Everyone who has done any serious reading or thinking about jurisprudence is familiar with the confusion caused by the many meanings of the word "law". From the title of Mr. Hurst's book one might expect something like Judge Cardozo's "Growth of the Law," or perhaps something like Professor Gray's "Nature and Sources of the Law," but there is no resemblance. Professor Hurst is talking, as his sub-title suggests, about the principal American institutions which have "made" the law and have themselves in turn been "made" by the law, or at least have been shaped by the law. Everyone would expect to find the legislature and the court among such a list of institutions, some would expect to find also the executive department of government and the constitution makers, but few would expect to find the bar treated, and with convincing aptness, as a maker of law.

Professor Hurst, who teaches at the University of Wisconsin Law School, is an obvious disciple of the Pound school of sociological jurisprudence, a natural if not inevitable result of being one of Dean Pound's students. The treatment of law as an adjustment of conflicting interests and "as mediator in the general interest" is in the Pound tradition, but Professor Hurst's book differs from Dean Pound's writings as a Brandeis brief differs from a Holmes opinion. I am sure that Professor Hurst is quite at home in a philosophical library but he has left the shelter of the library to dig among the prosaic records of American institutions in action. His digging seems as objective as that of an archeologist. As a result, we see that our legal institutional selves are not nearly as pretty as we thought. The reason, as Professor Hurst's investigation clearly shows, is that we have been too absorbed in law as an adjustment of conflicting private interests to be much concerned with law as mediator in the general interest. For example, Mr. Hurst contrasts the legislative inventiveness of the bar in the interests of private clients with the small contribution in the public interest in the matter of legislative drafting.

Professor Hurst does not pretend to have exhausted his field of study but only to have made a beginning. Doubtless one of the greatest results of his book will be that it shows bright young lawyers that they can justify

their professional lives by making and publishing community studies of law in action. The studies in Florida badly needed are, among many others, the use of the master in chancery as a substitute for the judge, the manner of handling divorce cases, the governor's manner of handling the constitutional duty "to see that the laws are enforced," the effect of race in criminal trials as to verdict and sentence, and the extent to which juries ignore the law of contributory negligence and substitute comparative negligence. Heretofore, the main source of material for writers in law school periodicals has been the opinions of appellate courts. This is the obvious corollary of the case book method of teaching. The appellate opinion is a valid and important, but by no means exclusive, object of legal study.

Professor Hurst shows us new areas of valid legal study so underworked that laborers in it are assured of a socially fruitful reward. If some leave the overworked field of rehashing appellate opinion so much the better.

HON. STANLEY MILLEDGE

CIRCUIT JUDGE
DADE COUNTY, FLA.

MEXICO: THE STRUGGLE FOR PEACE AND BREAD. By Frank Tannenbaum.
New York: Alfred A. Knopf. 1950. Pp. xiv, 293, xi. \$3.50.

Three years ago Mexico's newly elected president, Miguel Aleman, declared that Mexico's long Revolution was over and that his country now had a job of modernization to do. This book is a significant attempt to evaluate the gains and analyze the results of that long, painful struggle out of which modern Mexico has been born. Few men are better qualified to make such a study than Frank Tannenbaum who has won for himself a hemispheric reputation by his stimulating lectures and seminars at Columbia University and whose knowledge of Mexico grows out of three decades of familiarity with that country.

This is a book about Mexico. It began, however, as a study of the issues at stake between Mexico and the United States since 1910. The author quickly realized that the matters at stake could not be understood without a careful study of the "Mexican complex of economic and social tensions that gave the diplomatic dispute its peculiar flavor and significance." Understanding between the two nations became possible only when the United States recognized that the basic premises upon which each nation based its arguments were different and finally conceded to Mexico that same right to determine its own policies for its own people that the American people have always cherished for themselves. Before that

The American argument persisted in restating the traditional position of the rights of foreigners contractually acquired under previous law. The Mexicans denied the very basis of the contract,